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Supreme Court, U.S.
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No. 92-692

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

E. D. SHELLEDY, Petitioner

v.

EDWARD LORE, et al., Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

REPLY BRIEF OF PETITIONER

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I.

SALT LAKE COUNTY HAS NOT RESOLVED CONFLICT OF UTAH DECISION WITH DECISIONS OF THIS COURT.

Salt Lake County suggests on page 11 of its Brief in Opposition that Petitioner has failed to cite any cases which support his position that the statute of limitations is not a valid bar to his claim to the property when the grantor was the United States. On the contrary, several cases cited by Petitioner stand for that very proposition.

Gibson v. Chouteau, 13 Wall. [80 U.S.] 92, 20 L.Ed. 534 (1871) stated in the strongest terms that no state limitations period could run while the property belonged to the United States to deprive the government's grantee of the right to possess and enjoy the land. Simmons v. Ogle, 105 U.S. 271, 26 L.Ed. 1087 (1881) declares that neither limitations statutes

nor equitable doctrines such as laches can begin to effect any grantee of the government until legal title is conveyed. Redfield v. Parks, 132 U.S. 239, 33 L.Ed. 327 (1889) holds that while title to property is in the United States, no adverse possession of it under a state statute of limitations can confer title as against that asserted in an action of ejectment brought by a grantee claiming legal title from the United States.

This principle that no state limitations period can run while title is in the United States was so well settled as to be no longer open to discussion until the Utah Supreme Court's decision herein, which seeks to contradict this Court's long-held principles under the rubric of standing doctrine.

A. Petitioner's Cited Cases Not Distinguishable On "Public Lands" Issue.

Salt Lake County attempts to

distinguish the cases cited above and in the Petition for Writ of Certiorari by asserting that they dealt with the disposition of "public lands" and that this case does not. This argument fails for two reasons: first, the property at issue in the instant case is within the definition of "public lands," and, second, whether it was "public lands" is not material to the effect of the immunity of the United States upon the title dispute herein.

"Public lands" is most frequently defined as being lands of the United States which are subject to "sale or other disposal under general laws." Such general laws would include the provisions of the Small Business Act found at 15 U.S.C. §631 et seq. Specifically, §634(b)(3) provides that the Small Business Administrator may "... sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall

determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this Act."

It was pursuant to and fully within the scope of this authority that the Small Business Administration (SBA) conveyed the property in dispute herein to Petitioner. Although it is frequently stated in the cases that the term "public lands" does not include those lands to which claims or rights of others have attached, a review of the cases indicates this is simply another means of stating that the government no longer has authority to sell the land under general laws because it was withdrawn from the public domain by prior appropriation such as by sale to a private party, withdrawal under a prior land grant, or a valid entry under homestead laws. All the "public lands" cases cited by Salt Lake County in its Brief in Opposition are of

this sort: Northern Lumber Co. v. O'Brien, 204 U.S. 190 (1907) (land previously withdrawn in an earlier grant); Western Nuclear, Inc. v. Andrus, 664 F.2d 234 (10th Cir. 1981) (privately held land in which U.S. retained mineral rights); Payne v. Central Pacific Rwy. Co., 255 U.S. 228 (1921) (land included in prior land grant); Columbia Basin Land Protection Ass'n. v. Schlesinger, 643 F.2d 585 (9th Cir. 1981) (privately held land in which U.S. retained mineral rights); Hamerly v. Denton, 359 P.2d 121 (Alaska 1961) (withdrawn from public lands by a valid entry under homestead laws).

No case cited by Salt Lake County (and Petitioner believes none exist) hold that the existence of a mere lien against property of the United States removes it from the public domain. This is because a mere lien such as Salt Lake County claimed against the property does not deprive the

titleholder, whether it be the United States or a private party, of the power of sale or disposition of that land. The Utah Supreme Court acknowledges this fact in its opinion in this case, as well as other cases. Shelledy v. Lore, 836 P.2d 786, 788 (Utah, 1992); Salt Lake Home Builders, Inc. v. Colman, 30 Utah 2d 379, 518 P.2d 165 (1974); Dillman v. Foster, 656 P.2d 974 (Utah 1982). Since a mere lien interest does not deprive the titleholder of the power to sell or dispose of the land, it is not removed from the public domain.

Furthermore, Petitioner submits that whether the property was "public lands" is not a material fact in the Court's decisions in the Gibson, Simmons, Redfield and similar cases. Salt Lake County's apparent contention is that the federal government doesn't mind that its assets are taken from it without its consent, except where those assets are part of "public

lands." This is, of course, not the case, and the fact that most decisions addressing sovereign immunity issues in the context of the government's grantees involve public lands does not limit the immunity of the United States to such circumstances.

The fundamental proposition which is the basis of these decisions is the settled rule of sovereign immunity that an action against property in which the United States has an interest is an action against the United States. Minnesota v. United States, 305 U.S. 382, 595 S.Ct. 292, 83 L.Ed. 235 (1939). Absent the consent of the United States, any court or taxing authority conducting such proceedings is without jurisdiction and any actions taken are void. United States v. Alabama, at 313 U.S. 282. Once the SBA became owner of the property at issue here, Salt Lake County lacked jurisdiction because Congress has not consented to the foreclosure of a tax

lien against property to which the United States held title. The County's actions were void and no limitations period could frustrate the SBA's exercise of management and disposal of the property or Petitioner's right to its enjoyment. Gibson v. Chouteau, at 13 Wall. [80 U.S.] 100.

B. Real Party In Interest Cases Are Not Applicable to the Issues of This Case.

Salt Lake County goes on to cite some cases involving real party in interest issues in an attempt to deny conflicts with this Court's decisions. This argument is also unpersuasive. All the cases cited by Petitioner, Gibson v. Chouteau, Simmons v. Ogle, and others, involved actions by or involving the United States' grantee seeking to clear their title which was clouded by other private parties claiming to hold an interest or title which arose during the time of ownership by the United

States. This is also the situation here. In the cases cited by Salt Lake County, the United States brought suit to assert rights for the benefit of private parties long after those parties had obtained their interest from the United States. The cases were dealt with as though they were simply brought by these private parties, the real parties in interest. In United States v. Beebe, 127 U.S. 338, the facts involved private parties whose respective claims were some forty-five years old and limitations periods ran during the time they were the real parties in interest. Similarly, in Curtner v. United States, 149 U.S. 662 (1893), both parties claimed interest under the United States and the asserted periods of limitations and laches accrued entirely after the private interests had attached. Neither case has any persuasive authority to the facts of this case, where Petitioner immediately

brought suit to quiet title after acquiring title from the SBA.

II.

SALT LAKE COUNTY MISSTATES OR MISAPPREHENDS THE LAW OF UNITED STATES v. ALABAMA AS IT PERTAINS TO VOID DEEDS.

Salt Lake County asserts in its Brief that Petitioner's contention--that a deed issued from a county lacking jurisdiction over the property because of ownership in the United States is void--is not supported by legal authority, implying that such a deed is merely voidable. Petitioner strongly disagrees.

Apparently Salt Lake County believes this Court did not mean what it said in United States v. Alabama, 313 U.S. 274 (1940). In the Alabama case, this Court viewed a fact situation materially identical with this case at the time of Salt Lake County's purported 1984 tax sale. With respect to the tax sales, this Court

stated:

> A proceeding against property in which the United States has an interest is a suit against the United States. [Citation omitted] The United States was an indispensable party to proceedings for the sale of the lands, and in the absence of its consent to the prosecution of such proceedings, the county court was without jurisdiction and its decrees, the tax sales and the certificates of purchase issued to the State were void.

Alabama, at 313 U.S. 282 [emphasis added].

It is the lack of jurisdiction that renders the tax deeds void. Jurisdiction goes to the very power of the actor to assert authority over the property, just as presence or absence of jurisdiction in a court either gives it authority, or finds

authority lacking, respectively, to act on the matter before it. Courts universally recognize that a decision rendered without jurisdiction is void, not merely voidable. As this Court clearly indicated in Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S.Ct. 116, 65 L.Ed.297 (1920):

> Courts are constituted by authority and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal.

Valley, at 254 U.S. 353-54.

Just as decisions of courts in excess of their jurisdiction are void, tax sales of property over which the taxing authority lacks jurisdiction are also void, not

merely voidable. This is the holding of this Court in United States v. Alabama. The principle is also supported in Baxter v. Utah Department of Transportation, 783 P.2d 1045 (Ut.App. 1989), where the Utah Appellate Court's determination that because the property therein was not within the boundaries of the taxing county, its tax deed was void. Since that county lacked jurisdiction, it therefore "had no authority to tax the property, to acquire title when taxes were unpaid, or to convey title through a tax deed." Baxter, at 783 P.2d 1047. Just as the taxing county in Baxter lacked jurisdiction because the land was not within its boundaries, Salt Lake County lacked jurisdiction over the property herein at the time of the tax sale because it was owned by the SBA. Though the lack of jurisdiction by the taxing authorities arose through different circumstances, the result is the same: the

tax deeds were void. United States v. Alabama, 313 U.S. 274 (1940). Thus, the Utah Supreme Court's decision in Hansen v. Morris, 3 Utah 2d 310, 283 P.2d. 884 (1955), supports Petitioner's position by declaring that short statutes of limitation will run only if the tax deeds are valid on their face and executed by the same authority that could have passed good title if each and every statutory step in perfecting a tax title had been followed, without the aid of limitations statute. Hansen v. Morris, at 283 P.2d 887. Since a county that does not have jurisdiction over the property cannot pass good title no matter how closely statutory steps are followed, limitations statutes are not applicable to such circumstances as appear in this case.

III.

COUNTY'S THIRD-PARTY STANDING ARGUMENTS ARE UNSUPPORTED.

Salt Lake County asserts, without evidentiary or legal support, that Petitioner does not meet the factors permitting third-party standing. In its Brief in Opposition, the County claims that no burden will fall on the government as a result of the Utah Court's decision, nor would it impair the federal government's ability to manage and dispose of its property. It is worth noting that the SBA does not agree with this view. In a letter to the Utah Supreme Court following the decision herein, the SBA urged the Utah Court to reconsider its decision, because it would "have serious adverse impact on the SBA's future loan liquidation activities," would "strip the SBA of the value of its property rights," and would "condone and give legitimacy to the illegal

taxation and taking that occurred in this case." See, SBA letter to Utah Supreme Court, reprinted herein as Appendix A.

Both the Utah Supreme Court's decision and Salt Lake County's arguments are supported only by the Tenth Circuit's decision in Kemmerer Coal Co. v. BYU, 723 F.2d 54 (10th Cir. 1981). Petitioner believes the Kemmerer opinion is fundamentally flawed and a classic example of the adage that "bad facts make bad law." But the ultimate holding of Kemmerer is to allow the statute of limitations to run against the grantee of a private party claiming a due process violation. However, under the facts of this case and under federal law there was no period during which the limitations could run due to the SBA's ownership. The Utah Court has failed to address this distinction. The fact that Petitioner purchased the property "on notice" of the tax deed is irrelevant

in light of the fact that well-settled federal law gives "notice" that the tax deed was void and that the SBA remained the lawful owner.

It is short-sighted to assume that the door opened by the Utah Supreme Court's decision herein will go unnoticed. Having allowed the County to illegally assess federally-owned property, then confirm the tax sale which was undeniably void under the well-established law of this Court, it is not a fanciful expectation that Salt Lake County and other local governments will accept the invitation of the Utah Court to raid federal assets. Petitioner asks this Court to correct this aberrant decision of the Utah Supreme Court, and to reaffirm the federal government's authority of managing and disposing of its property and its grantee's right to receive the benefit of such disposition.

CONCLUSION

For the above reasons, along with those expressed in his Petition for Writ of Certiorari, Petitioner requests that a Writ of Certiorari issue in this case and the decision of the Utah Supreme Court be reversed.

DATED November 23, 1992.

Respectfully submitted,

ERIC P. HARTMAN
Counsel of Record for
Petitioner E.D. Shelledy

APPENDIX A

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

May 1, 1992

The Honorable Richard C. Howe
Associate Chief Justice
Utah Supreme Court
322 State Capital Building
Salt Lake City, Utah 84114

Re: Utah Supreme Court Opinion in Shelledy v. Lore, et.al., No. 900074

Dear Justice Howe:

The Utah Supreme Court's Opinion in Shelledy v. Lore, et.al., No. 900074, issued April 14, 1992, has been brought to our attention. Although the Small Business Administration ("SBA") was not made a party to the above-captioned action, most of the issues in the case involve the Agency and the decision itself will have a serious adverse impact on the SBA's future loan liquidation activities. Accordingly, we are writing to respectfully request the Court to grant the Petition for Rehearing

of Appellant E. D. Shelledy in order to reconsider the ruling. We believe the current ruling will not only have a serious adverse impact upon the rights of the SBA as previously stated, but will set disturbing, and we believe incorrect, precedent contrary to established doctrines of sovereign immunity and the federal/state relationship.

As the decision notes, following the preliminary tax sale on January 15, 1979, the property owner, although delinquent in his real estate taxes, maintained the underlying ownership interest in the property. Thus, the quitclaim deed from the Pearsons to the SBA in 1981 vested in the SBA fee simple title to the property.

The SBA, as an agency of the Federal Government, is entitled to its sovereign immunity. Salt Lake County ("County") was, thus, barred from enforcing any tax liens against the United States unless the United

States waived its sovereign immunity to such suit. In 1972, the United States Congress passed the Quiet Title Act, 28 U.S.C. § 2409a, providing a limited waiver of sovereign immunity to persons challenging the United States' title to real property. Under the Quiet Title Act, Congress provided the exclusive means by which an adverse claimant can challenge the United States' title to real property. As the United States Supreme Court stated, the Quiet Title Act provides "the exclusive means by which adverse claimants could challenge the United States' title to real property." Block v. North Dakota, 461 U.S. 273, 286, 75 L.Ed. 2d 840, 103 S.Ct. 1811 (1983) (emphasis added).

Thus, under the federal statutory scheme and United States Supreme Court precedent, the only way the County could obtain title to property held in the name of a United States instrumentality is by

suit in federal court pursuant to 28 U.S.C. § 2409a. Consequently, during the time the SBA held title to the property, the County could not wrest title from the SBA by a non-judicial tax sale. In the instant case, the County was obligated to bring a suit against the United States under the Quiet Title Act in order to obtain legal title to the property. It did not do so. Without such action, the County could not and did not obtain valid legal title to the property in the May 1984 tax sale. Furthermore, the County could not validly transfer what it did not have. Title to the property remained with the SBA until the SBA transferred its interest in the property to Mr. Shelledy in 1988.

In addition, the Shelledy decision allows the Utah four year statute of limitations to run against the United States. This holding clearly contravenes

well-established United States Supreme Court precedent that the United States and its instrumentalities are not subject to state statutes of limitations. United States v. Summerlin, 310 U.S. 414, 84 L.Ed. 1283 (1940); United States v. John Hancock Mutual Life Insurance Co., 364 U.S. 301, 5 L.Ed. 2d 1 (1960). Because the Utah statute of limitations could not run against the SBA while SBA owned the property, the SBA retained legal title to the property which it then transferred to Mr. Shelledy. Thus, the effect of the Court's decision is to strip the SBA of the value of its property rights by stating that the time for asserting a claim against a tax sale ran as to Mr. Shelledy -- indeed as to all potential purchasers of the property -- before he acquired the property from the SBA.

The Shelledy decision recognizes that property owned by the SBA is exempt from

taxation. This is in harmony with the United States Supreme Court's holding in M'Culloch v. Maryland, 17 U.S. (4 Wheat) 316 (1819). Nevertheless, the effect of the Shelledy decision is to condone and give legitimacy to the illegal taxation and taking that occurred in this case. The tax sale held by the County in May of 1984 included illegal taxes levied by the County against the SBA. The Utah Supreme Court has previously held that "if the tax on the land for which the [tax] sale was made is invalid, then the sale is void, and the defendant got no title by her tax deed." Huntington City v. Peterson, 518 P.2d 1246, 1249 (Utah Supreme Court 1974). Here, where the tax sale was based at least in part upon illegally levied taxes, the tax sale, under Utah precedent, should likewise be held void, and the County found not to have obtained valid title by the tax deed.

Finally, the Shelledy decision states that Mr. Shelledy cannot assert the constitutional rights of the SBA, because there is no substantial relationship between the parties. This would seem to ignore the seller/buyer relationship between the SBA and Mr. Shelledy. Moreover, the decision states that Mr. Shelledy cannot assert the constitutional rights of the SBA because the SBA will not be adversely affected. With this we cannot agree.

As outlined above, the SBA believes that the precedent set by the Shelledy decision will adversely affect the SBA's interests. Accordingly, the SBA respectfully urges the Court to grant the Appellant's Petition for a Rehearing and to reconsider its decision in this case. If the Court determines to grant the Petition for Rehearing, the SBA will seek the Court's approval to participate.

Respectfully,

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